

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Malachi I. Yahtues

v.

Case No. 21-cv-533-SE

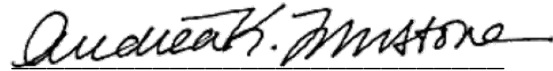
Old Colony Correctional Center,
Superintendent, et al

REPORT AND RECOMMENDATION

Petitioner Malachi Yahtues filed a motion (Doc. No. 33) asking the Court to issue a Certificate of Appealability as to the claims which this Court has already resolved. "The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11, Rules Governing § 2254 Proceedings (emphasis added). In this case, the Court has entered summary judgment as to certain of Mr. Yahtues's claims. See Mar. 29, 2024 Order (Doc. No. 24). However, still pending is Mr. Yahtues's Petition Amendment (Doc. No. 26), which asserts a claim that is still pending in this matter. As the Court has not yet issued a final order in this case, Mr. Yahtues's request for a Certificate of Appealability is premature. Accordingly, the District Judge should deny Mr. Yahtues's motion for a certificate of appealability (Doc. No. 33), without prejudice to Mr. Yahtues's ability to seek a Certificate of Appealability once a final order has issued in this matter. Any objections to this Report and Recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). The fourteen-day period may be extended upon motion. Only

those issues raised in the objection to this Report and Recommendation are subject to review in the district court. See Sch. Union No. 37 v. United Natl Ins. Co., 617 F.3d 554, 564 (1st Cir. 2010). Any issues not preserved by such objection(s) are precluded on appeal. See id. Failure to file any objections within the specified time waives the right to appeal the district court's order. See Santos-Santos v. Torres-Centeno, 842 F.3d 163, 168 (1st Cir. 2016).

SO ORDERED.

A handwritten signature in black ink, reading "Andrea K. Johnstone", written over a horizontal line.

Andrea K. Johnstone
United States Magistrate Judge

Date: February 28, 2025

cc: Malachi I. Yahtues, pro se
Counsel of Record